Supreme Court, U.S.
FILED
AUG 4 1992
OFFICE OF THE CLERK

(3)

No. 92-57

In The

Supreme Court of the United States

October Term, 1992

CORNELL UNIVERSITY,

Petitioner,

vs.

RUSK COUNTY,

Respondent.

Petition For Writ Of Certiorari To The Court Of Appeals Of The State of Wisconsin

BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

DOES THE WISCONSIN UNITARY PROPERTY TAXING SYSTEM WHICH EXTINGUISHES SEVERED MINERAL INTERESTS IN PROPERTY TAKEN BY TAX DEED VIOLATE THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT?

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STATEMENT OF THE CASE

Respondent-Rusk County accepts the statement of the case offered by the Petitioners-Cornell University.

ARGUMENT

THE WISCONSIN APPELLATE COURT CORRECTLY ASSESSED THE DUE PROCESS ARGUMENTS OF THE PETITIONER WHEN DECIDING THAT THE UNITARY TAXING SYSTEM FOR REAL PROPERTY IN THE STATE OF WISCONSIN DID NOT VIOLATE THE DUE PROCESS PROVISIONS OF THE 14TH AMENDMENT.

The Wisconsin Appellate Court in *Cornell University v. Rusk County,* 166 Wis.2d 811, 481 N.W.2d 485 (Ct. App. 1992) assessed both the procedural and substantive due process claims of Cornell University in deciding that the unitary taxing system in the State of Wisconsin did not violate the due process clause of the 14th Amendment of the United States Constitution. Citing *Anderson National Bank v. Luckett,* 231 U.S. 233 (1944), the Appellate Court states that due process requires "An opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked." Cornell University has made no claim in this case that the procedure leading up to the taking of the real estate in question by tax deed was in any way constitutionally defective. The Wisconsin Appellate Court found, and the Petitioner in fact stipulates that they did receive notice from Rusk County of the county's intent to take tax deed to the property. The Wisconsin Appellate Court correctly found that Cornell University has the

right at common law to various remedies before the state can deprive it of its property interest. The Wisconsin Appellate Court cited Wisconsin Statutes section 75.61 as evidence that the Wisconsin Legislature has contemplated the use of common law procedures in order to grant owners of real estate protection before property interests are deprived by the State of Wisconsin. Because of the notice to Cornell University of the intent to take the property by tax deed and because of the common law remedies at law which were found by the Appellate Court to exist under the Wisconsin law, this Court is not required to intervene to protect petitioner's 14th Amendment due process rights.

The second argument that the Wisconsin Court of Appeals addressed was the substantive due process argument of Cornell University that the extinguishment of its severed mineral interests upon the issuance of a tax deed was an improper "taking" of its property interest in violation of the due process clause of the 14th Amendment.

In *Anderson National Bank v. Luckett*, 321 U.S. 233 at 246, the U.S. Supreme Court has held that:

> "What is due process in a procedure effecting property interest must be determined by taking into account the purposes of the procedure and its effect upon the rights asserted and all other circumstances which may render the proceeding appropriate to the nature of the case."

The Wisconsin Appellate Court, citing *Oliver v. Travelers Insurance Company*, 103 Wis.2d 644, 309 N.W.2d 383 (Ct. App. 1981) indicated that the test for substantive due process is whether the statutes have a reasonable and rational relationship to their purpose and whether the

purpose is a proper one. The State of Wisconsin has established a unitary taxing scheme for real property. Such a scheme is designed to ensure that all elements of value of a parcel of real estate are assessed and that no element of value escapes taxation. Land is therefore taxed as a unit. *Schmidt v. Town of Almon,* 181 Wis.2d 244, 194 N.W. 168 (1923). The remedy for non-payment of taxes is the taking of the property for which taxes are unpaid by the county through tax deed. Under a unitary taxing scheme the entire parcel including all elements of the value of that property are taken by the State since taxes on the property's entire value are unpaid. This taxation and enforcement scheme was correctly found to be proper and reasonably related to the State's purpose of assessment and collection of taxes. The Wisconsin Appellate Court correctly held that there was nothing about the unitary taxing scheme for taxation of real property in the State of Wisconsin which violated any due process provisions of the 14th Amendment. The Appellate Court undertook an extensive evaluation of the claims by Cornell University that its due process rights were violated when its mineral interests were extinguished upon the taking of a tax deed by Rusk County. Nothing in the Appellate Court's decision indicates that it incorrectly decided the issues raised by Cornell University and nothing in the decision by the Wisconsin Appellate Court conflicts with any decisions of any other courts.

CONCLUSION

For the foregoing reasons the petition for a Writ of Certiorari should be denied by this Court.

Respectfully submitted,

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